



**Sterne Kessler
Goldstein Fox**
ATTORNEYS AT LAW

Robert Greene Sterne
Edward J. Kessler
Jorge A. Goldstein
David K.S. Cornwell
Robert W. Esmond
Tracy-Gene G. Durkin
Michele A. Cimbala
Michael B. Ray
Robert E. Sokohl
Eric K. Steffe
Michael Q. Lee
Steven R. Ludwig
John M. Covert
Linda E. Alcorn
Robert C. Millonig
Lawrence B. Bugaisky
Donald J. Featherstone
Michael V. Messinger
Judith U. Kim
Timothy J. Shea, Jr.

Patrick E. Garrett
Jeffery T. Helvey*
Heidi L. Kraus
Crystal D. Sayles
Edward W. Yee
Albert L. Ferro*
Donald R. Banowitz
Peter A. Jackman
Molly A. McCall
Teresa U. Medler
Jeffrey S. Weaver
Kendrick P. Patterson
Vincent L. Capuano
Albert J. Fasulo II*
Eldora Ellison Floyd
W. Russell Swindell
Thomas C. Fiala
Brian J. Del Buono*
Virgil Lee Beaton*
Reginald D. Lucas*

Kimberly N. Reddick
Theodore A. Wood
Elizabeth J. Haanes
Bruce E. Chalker
Joseph S. Ostroff
Frank R. Cottingham*
Christine M. Lhullier
Rae Lynn Prengaman*
Jane Shershenovich*
Lawrence J. Carroll*
George S. Bardmesser

Senior Counsel
Samuel L. Fox
Kenneth C. Bass III

Registered Patent Agents
Karen R. Markowicz
Andrea J. Kamage

Nancy J. Leith
Joseph M. Conrad III
Ann E. Summerfield
Helene C. Carlson
Gaby L. Longworth
Matthew J. Dowd
Aaron L. Schwartz
Angelique G. Uy
Boris A. Matvenko
Mary B. Tung
Katrina Y. Pei
Bryan L. Skelton
Jason D. Eisenberg
Alicia M. Choi

*Admitted only in Maryland
*Admitted only in Virginia
*Admitted only in Texas

TECH CENTER 1600/2900

APR 24 2002

April 22, 2002

WRITER'S DIRECT NUMBER:

(202) 371-2544

INTERNET ADDRESS:

MCIMBALA@SKGF.COM

Commissioner for Patents
Washington, D.C. 20231

Art Unit 1652

Re: U.S. Utility Patent Application
Appl. No. 09/722,441; Filed: November 28, 2000
For: **Increased Lysine Production by Gene Amplification**
Inventors: Hanke *et al.*
Our Ref: 1533.1030002/MAC/PAC

Sir:

Transmitted herewith for appropriate action are the following documents:

1. Reply to Restriction Requirement; and
2. One (1) return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Michele A. Cimbala
Attorney for Applicants
Registration No. 33,851

MAC/PAC:drb
Enclosures



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#11
NB
04/25/02
TECH CENTER 1600/2900

APR 24 2002

RECEIVED

In re application of:

HANKE *et al.*

Appl. No. 09/722,441

Filed: November 28, 2000

For: **Increased Lysine Production by
Gene Amplification**

Confirmation No. 4696

Art Unit: 1652

Examiner: Kerr, K.

Atty. Docket: 1533.1030002/MAC/PAC

Reply To Restriction Requirement

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated **March 20, 2002**, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group II, species (i), represented by claims 12 and 19. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

With respect to the Examiner's restriction of Group II into species (a) thru (l) and the reasons stated therefor, Applicants respectfully traverse. Applicants respectfully request that species (a) thru (l) of Group II be rejoined because each species contains SEQ ID NO:2, therefore there is a relationship between the species. The M.P.E.P. § 806.04(f), states:

[c]laims to be restricted to different species must recite the mutually exclusive characteristics of such species.

Thus, in view of the M.P.E.P. § 806.04(f), Applicants respectfully request that species (a) thru (l) of Group II be rejoined.

With respect to the Examiner's division of the claims into seven groups and the reasons stated therefor, Applicants respectfully traverse. Groups I thru VII are related as between polypeptides, polynucleotides, and vectors and host cells comprising said molecules for use in the production of lysine. Even assuming, *arguendo*, that Groups I thru VII represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of the groups together would not be a serious burden on the Examiner. Applicants submit that the polypeptides, polynucleotides, and the vectors and host cells comprising these molecules all share a common function in that they all act in the production of lysine. The common function lessens the burden on the Examiner as there will be significant overlap in the search and examination of polynucleotides which encode the active polypeptides and the vectors and host cells comprising these molecules. This common utility thereby makes it a simple matter for the Examiner to search and examine publications disclosing the polynucleotides involved in lysine biosynthesis. The M.P.E.P. § 803, states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

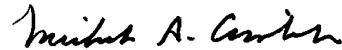
Thus, in view of the M.P.E.P. § 803, Applicants respectfully request that the claims of Groups I thru VI be searched and examined in the captioned application. Applicants retain the right to petition from the Restriction Requirement under 37 C.F.R. § 1.144. Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of

time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Michele A. Cimbala
Attorney for Applicants
Registration No. 33,851

Date: Apr. 22, 2002
1100 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005-3934
(202) 371-2600

SKGF_DC1:4957.1